



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 4, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Portage County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 7, 2015, by telephone.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS from July through December 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Sauk County, and formerly lived in Portage County.
2. The petitioner received FS as a household of two persons from at least January through December 2013.

3. On March 4, 2015, a *Foodshare Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$365.00 in FS for the 7/1/13 – 12/30/13 period (claim #3900 427993). The overpayment was due to client error.
4. On January 29, 2013, the Department issued an eligibility notice to the petitioner, advising that she must report gross monthly income exceeding \$1,682.37 by the tenth of the month following that change. The petitioner's household had income under \$1,682 prior to June 2013. The household's gross income exceeded that reporting threshold in June 2013 (\$2,392.39), so a report was due by July 10, 2013 (to affect August benefits).
5. The petitioner's husband's job at [REDACTED] ended in May, with his final check being dated May 31, 2013. He began working at [REDACTED] on May 28, 2013. The petitioner filed an online Six Month Report Form on June 11, 2013, stating that the petitioner was employed at [REDACTED], and that the husband was working at [REDACTED]. The husband grossed \$1,682.37 for the four weeks in June 2013. When his four weekly checks were averaged and multiplied by 4.3 (required per federal FS rule), the result was \$1,808.54. The combination of the petitioner's \$751.43 earnings plus the husband's \$1,808.54, was \$2,559.97; that was over the reporting threshold and enough to make the household ineligible for any amount of FS from July through December 2013.
6. The petitioner took her husband's four June paystubs to the agency's receptionist during the first week in July 2013. However, the stubs did not make their way to the worker assigned to the case, and the agency continued to budget an incorrect, low income amount for the household. There was no other contact from the petitioner to the agency until December, when the petitioner allowed her case to close. The agency later noticed the higher household income when it received an employer wage match report from the Wisconsin Department of Workforce Development in 2014.

DISCUSSION

I. FS OVERPAYMENT RECOVERY.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount – (1) Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment ...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> . The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. There is a one-year time limit, however, for how far back in time the agency may go if the overpayment was due to agency error. Because the agency sought to recover for a period that was more than one year old, this overpayment is only recoverable if it was due to non-fraudulent client error *or* fraudulent client error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 7/1/13 – 12/30/13 PERIOD, BUT IT IS NOT RECOVERABLE.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's household income is in dispute. The petitioner testified that she made a telephonic contact with the agency regarding her husband's job and brought a month's worth of paystubs from her husband's new job to the agency during the first week in July 2013. She believed that she had provided the agency with adequate notification of his new job through this action. In a prior FS Intentional Program Violation (fraud) hearing, a different Administrative Law Judge concluded that the agency had not established by clear and convincing evidence that the petitioner had engaged in fraudulent conduct for this time period.

The burden in an overpayment hearing, such as this one, is lower. The burden is still on the agency, but it need only establish that the petitioner engaged in either fraudulent or non-fraudulent conduct by a preponderance of the credible evidence.

If the agency had issued notices to the petitioner after July 2013 that advised her to report higher income, I would have upheld the later portion of the overpayment for failure to report an income increase. However, I have reviewed the Department's notice history database and observe that the Department did not issue such a notice to the petitioner from July 2013 onward. Rather, the notices that were issued (June 17, September 9, October 7, 2013) all say "Because your total income exceeds 130% FPL for your FoodShare group size and you remain eligible, you do *not* have to report any changes until your next review or six month report form." Because the overpayment was caused by agency error, the agency is not allowed to go back to the July - December 2013 period in its recovery effort.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$365 in FS from July 2013 through December 2013, due to agency error.
2. The county agency may *not* pursue recovery of that overpayment, pursuant to federal law.

[REDACTED]

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to cease recovery efforts on FS claim [REDACTED] within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of August, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 3, 2015.

Portage County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability